REMARKS

Claims 24-33, 47 and 56-68 remain pending in the application.

The Applicants respectfully request that the Examiner reconsider earlier rejections in light of the following amendments and remarks. No new issues are raised nor is further search required as a result of the changes and remarks made herein. Entry of the Amendment is respectfully requested.

Claims 24-29, 31, 47 and 56-68 over Matsuda in view of Olkin

In the Office Action, claims 24-29, 31, 47 and 56-68 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent Application Publication No. 2002/0133573 to Matsuda et al. ("Matsuda") in view of U.S. Patent No. 6,310,892 to Olkin ("Olkin"). The Applicants respectfully traverse the rejection.

Claims 24-29, 31, 47 and 56-68 are amended herein to recite, inter alia, a transport layer of a connectionless transport protocol that provides for networking services comprising message duplication detection, the message duplication being **acknowledged using a peer wireless protocol layer to facilitate discard** of the duplicate message.

The Examiner alleges for Matsuda that "if a NOA client can utilize the services of another NOA client, then it is **inherent** that they are connected to one another". (see Office Action, page 3) Further, the Examiner alleges that Olkin's disclosure "**inherently** encompasses OSI transport layer". (see Office Action, page 3) "That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown." In re Spormann, 363 F.2d 444, 448,150 USPQ 449, 452 (CCPA 1966). Such a retrospective view of inherency is not a substitute for some teaching or suggestion supporting an obviousness rejection. See In re Newell, 891 F.2d 899, 901, 13 USPQ2d 1248, 1250 (Fed.Cir.1989). Thus, the Examiner's reliance on **inherent** features within either Matsuda or Olkin, much less both, is **improper**. The Applicants respectfully request that the rejection of claims 24-29, 31, 47 and 56-68 be withdrawn based on its **improper** reliance on inherency.

In response to Applicants' arguments that the rejection of claims 24-29, 31, 47 and 56-68 is improper because the rejection is based on alleged **inherent** features within Matsuda and Olkin, the Examiner **further** alleges that Applicants' claimed features are **inherent** in **both** Matsuda and Olkin. (see Response to Amendment section of the Office Action, page 11) The Examiner alleged that the "Applicant has not provided any **rationale** as to why the Examiner's assertion [of inherent features] is improper." (see Office Action, page 11) As discussed above, the use of **inherency** in a rejection based on obviousness, as is being used against claims 24-29, 31, 47 and 56-68, has been **adjudicated** as being **improper**. The Examiner's assertions concerning inherent features from Masuda and Olkin are **irrelevant** based on the Examiner's simple use of **inherency** as a basis for making a rejection based on obviousness. The rationale that the Applicants have provided that the Examiner's use of inherency to rejection claims 24-29, 31, 47 and 56-68 is improper is based on **caselaw**.

The Examiner acknowledged that "Matsuda does not specifically disclose the transport protocol is a connectionless transport protocol used to allow said plurality of servers to communicate with one another and to provide networking services comprising message segmentation and reassembly, message duplication detection." (see Office Action, page 4) The Examiner relies on Olkin to alleged make up for the deficiencies in Matsuda. The Applicant respectfully disagrees.

The Examiner relied on Olkin at col. 6, lines 11-26 to allegedly disclose the claimed message duplication detection. (see Office Action, page 4) Olkin at col. 6, lines 11-26 discloses:

> Although the connectionless protocol of the present invention does not require opening and closing a connection, the destination node initializes local state information upon receipt of the first segment of the message. The local state information allows the destination node to track subsequent segments of the message, even if segments arrive out of order, to re-construct that message. However, the local state information is discarded after [it] has been successfully received and reconstructed. In one embodiment, the local state information is received to prevent the receipt of duplicate segments as being interpreted as part of a new message. However, the amount of time that the local state information is

retained by the destination node is completely independent of the action that the source node takes following the completion of the sending of the message.

Thus, Olkin's detection of duplicate message segments is based on local state information that is received to prevent the receipt of duplicate segments as being interpreted as part of a new message. However, Olkin fails to perform any type of **acknowledgment to a peer wireless protocol layer** for such duplicate segments, much disclose, teach or suggest message duplication **acknowledged using a peer wireless protocol layer** to facilitate **discard** of the duplicate message, as recited by claims 24-29, 31, 47 and 56-68.

Matsuda and Olkin, either alone or in combination, fail to disclose, teach, or suggest a transport layer of a connectionless transport protocol that provides for networking services comprising message duplication detection, the message duplication **acknowledged using a peer wireless protocol layer** to facilitate **discard** of the duplicate message, as recited by claims 24-29, 31, 47 and 56-68.

Accordingly, for at least all the above reasons, claims 24-29, 31, 47 and 56-68 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Claims 30, 32 and 33 over Matsuda in view of Olkin and Bell

In the Office Action, claims 30, 32 and 33 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over Matsuda in view of Olkin, and further in view of U.S. Patent No. 6,044,081 to Bell et al. ("Bell"). The Applicants respectfully traverse the rejection.

Claims 30, 32 and 33 are dependent on claim 24, and are allowable for at least the same reasons as claim 24.

Claims 30, 32 and 33 recite, *inter alia*, a transport layer of a connectionless transport protocol that provides for networking services comprising message duplication detection, the message duplication **acknowledged using a peer wireless protocol layer** to facilitate **discard** of the

duplicate message. As discussed above, Matsuda and Olkin, either alone or in combination, fail to disclose, teach or suggest such features.
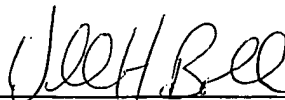
Bell is relied on to allegedly disclose if a new message sequence number is received before the necessary last segment of the previous message, to abort processing and return an error; and encapsulating a communication layer (see Office Action, page 9). Thus, even considering Bell's alleged disclosure, Matsuda, Olkin, and Bell, either alone or in combination, fail to disclose, teach or suggest a transport layer of a connectionless transport protocol that provides for networking services comprising message duplication detection, the message duplication **acknowledged using a peer wireless protocol layer** to facilitate **discard** of the duplicate message, as recited by claims 30, 32 and 33.

Accordingly, for at least all the above reasons, claims 30, 32 and 33 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

William H. Bollman
Reg. No.: 36,457
Tel. (202) 261-1020
Fax. (202) 887-0336

MANELLI DENISON & SELTER PLLC
2000 M Street, NW 7TH Floor
Washington, DC 20036-3307
TEL. (202) 261-1020
FAX. (202) 887-0336
WHB/df